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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1276

GERARDO A. RE, also known as JERRY A. RÉ and GERARD F. RE,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR REMAND, AFFIDAVIT AND EXHIBITS IN SUPPORT THEREOF

DANIEL H. GREENBERG,
Attorney for Petitioners,
475 Fifth Avenue,
New York, New York 10017.
212—LExington 2—6600

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Notice of Motion.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1276

GERARDO A. RE, also known as JERRY A. RE and GERARD F. RE,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

Petitioners Gerardo A. Re, also known as Jerry A. Re, and Gerard F. Re, respectfully move this Court to remand this proceeding to the United States District Court for the Southern District of New York, for the purpose of holding and conducting a plenary hearing on the allegations set forth in the annexed affidavit of Daniel H. Greenberg, and to grant unto petitioners such other and further relief as to the Court may seem just and proper.

Dated: New York, New York, May 23, 1967.

DANIEL H. GREENBERG,
Attorney for Petitioners.

Affidavit

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 1276

GERARDO A. RE, also known as JERRY A. RE and GERARD F. RE,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

DANIEL H. GREENBERG, being duly sworn, deposes and says:

1. The petition for a writ of certiorari was filed in this proceeding on April 15, 1967, and the brief in opposition by the United States of America was filed on May 17, 1967. Each of these documents is respectfully incorporated by reference herein.

2. I am the attorney for petitioners herein and I respectfully submit this affidavit in support of the motion of petitioners to remand this proceeding to the United States District Court for the Southern District of New York, for the purpose of holding and conducting a plenary hearing

on the allegations set forth in this affidavit, as well as those set forth in the original petition filed in the district court below for a writ in the nature of a writ of error *coram nobis* (treated in the courts below as a petition under Title 28, United States Code, § 2255), the supplemental petition, statement of particulars and reply affidavit, all submitted in connection herewith. The source of my information and the grounds for my belief in making this affidavit and the aforesaid motion are matters which have come to my knowledge and attention subsequent to the proceedings in this case held in the United States Court of Appeals for the Second Circuit and to my preparation and filing of the petition for a writ of certiorari herein. The authority for the procedure invoked by this motion and for the relief requested herein is the decision of this Court in *United States* v. *Shotwell Manufacturing Co.*, 355 U. S. 233 (1957).

3. One of the grounds upon which petitioners seek review by certiorari in their petition before this Court is the propriety of the use made by the government in this criminal prosecution of evidence, consisting of files, records, books, papers and other documents, which were illegally seized from their co-defendant in the same indictment, Lowell M. Birrell. The search and seizure of said records has been held by the same district court to have been in violation of the Fourth Amendment to the Constitution. This adjudication was made at a time subsequent to petitioner's trial, but during the course of the pre-trial proceedings as to Mr. Birrell. The facts are that following Mr. Birrell's departure from the United States, a large quantity of books, records, files and other documents were seized from premises in Bucks County, Pennsylvania. Said seizure took place several years before the filing of the indictment in this case. The basis for the seizure of the so-called "Birrell records" was two search warrants issued

out of the United States District Court for the Eastern District of Pennsylvania on August 22, 1959 and August 24, 1959 upon the affidavit basically of Edward C. Kalaidjian, Esq., attorney for the Trustee in Bankruptcy of Equitable Plan Company of Los Angeles, California. It has been the contention of the government throughout the pre-trial and post-trial proceedings of these petitioners, even as late as the brief submitted in opposition to the present petition for writ of certiorari, that petitioners lack and have lacked "standing" to complain about the search and seizure of the "Birrell records" and the use of such records as evidence against them at their trial, because they had no proprietary interest in said records and they were not among the objects or targets of said search. The Court of Appeals has accepted this assertion in its opinion affirming the order denying the petition herein. See 372 F. 2d 641, 644.

4. The fact is that petitioners did not learn until very recently, when they obtained copies of the aforesaid two search warrants, that they did have "standing", as that term is defined by this Court's decision in *Jones* v. *United States,* 362 U. S. 257, 261 (1960), to complain against said search and seizure, by reason of the fact that they were among the persons listed in said search warrants as being objects or targets of the search. This fact has been known to the government throughout these proceedings, but has been concealed from petitioners, in apparent violation of decisions of this Court in many cases, including, among others, *Brady* v. *Maryland,* 373 U. S. 83 (1963) and *Miller* v. *Pate,* No. 250 Oct. Term, 1966 (decided February 13, 1967). The government had a clear duty to disclose to petitioners or their attorneys their status as objects or targets of the two search warrants to enable them to test their validity as to them. This the government failed to do; rather it affirmatively concealed petitioners' status and standing in this matter.

5. This case does not involve a situation of petitioners knowingly waiving a known right. Throughout this case the government has contended and argued with great force that petitioners had no "standing" to object to the Birrell search and seizure because they were not among the objects or targets of that search. Yet the truth of the matter is directly contrary to this oft-repeated assertion. Thus, petitioners' failure to move pretrial to suppress the "Birrell records" as evidence which had been illegally seized from Mr. Birrell is not tantamount to a waiver by them of their rights herein. Moreover, the search warrants were also concealed from their trial attorney which warrants named petitioners as persons "against whom the search was directed," *Jones* v. *United States,* 362 U. S. 257, 261 (1960), as was the inventory, *infra,* designating their property in the items seized. Nevertheless, the affirmative acts of concealment by the government of petitioners' "standing" in this situation amounts in effect to a knowing suppression by the government of facts within its possession which would render this illegally seized evidence in its hands, subject to petitioners' right to move for its suppression. Since the commencement of this case there has been a duty on the government to make a proper and adequate disclosure to the defendants or their attorneys of the foregoing facts. For these reasons and at this point in the case, a plenary hearing on the entire background of the matter should be ordered by this Court in order to develop a record of this entire affair in this case. Parenthetically, it is to be noted also that by letter dated February 25, 1963, written by William V. Crosswhite, Esq., Regional Counsel of the Internal Revenue Service, New York City, to Honorable Louis F. Oberdorfer, then Assistant Attorney General, Tax Division, stated that the Criminal and Tax Divisions of the Department of Justice had found the seizure of the Birrell files to be illegal. Nevertheless, the government proceeded to use these records as evidence under the circumstances detailed hereinabove.

6. Petitioners also have learned recently that a 300 page summary or inventory of the contents of the books, records and files seized from Mr. Birrell has been prepared by the government and that a copy of this inventory has been furnished to Mr. Birell and his counsel. Petitioners sought to obtain a copy of said inventory from the government through the United States District Court for the Southern District of New York, but thus far they have been forestalled and thwarted from obtaining such copy. I have reason to believe based upon my constantly growing knowledge of the facts of this case, that this inventory contains details of records belonging to petitioners which were among those seized with the Birrell files. This is made more evident by the letter of Mr. Kalaidjian, dated May 22, 1961, addressed to Honorable Herbert Loewenthal, Referee, in Bankruptcy in the Southern District of New York, a copy of which is annexed hereto as an exhibit that among the records seized were those of Re, Re and Sagarese, the firm of these petitioners (See paragraph 5, p. 32, *infra*).

7. On April 26, 1967, I wrote to Honorable William B. Herlands, United States District Judge, of the Southern District of New York, requesting that a copy of the aforesaid inventory be furnished to me for use in this proceeding, stating that I desired this inventory to submit it to this Court. Copies of this letter were sent both to the United States Attorney and to the Solicitor General of the United States. On April 28, 1967, a hearing on this application was held before Judge Herlands, at which both a government attorney and I appeared. Judge Herlands stated that he was then about to decide Mr. Birrell's motion addressed to this inventory, and he conceded that the copy of the inventory previously furnished to Mr. Birrell and his counsel was under strictures precluding them from furnishing it to anyone else. Although, as Judge Herlands stated, this inventory was to be filed as part of the clerk's files in

the court records in the Birrell cases (including the untried indictment in this case as to Mr. Birrell), nevertheless it has not as yet been filed with the clerk. Since my appearance before him, Judge Herlands has not rendered his decision, although he stated in open court and on the record that "my decision and opinion are being typed."

8. Thereafter on May 10, 1967, I wrote to the United States Attorney, with a copy to the Solicitor General, directly requesting them that I be furnished with a copy of said inventory. To date I have not received any response to my letter. Thus, it would appear that again the government is attempting to conceal essential facts from petitioners, including the details of the Birrell files set forth in the 300 page inventory. Petitioners believe that among these many files are records belonging to them which were in Mr. Birrell's possession as a result of the attorney-client relationship which had existed between them.

9. Under all the circumstances, it would appear that a plenary hearing on these matters is warranted, to be held in the district court, to make a factual record of the facts and circumstances of petitioners' status, standing and interest in the Birrell files as well as the nature and extent of their own records and files which were among those seized in the Birrell files. Petitioners believe that such hearing should be held before a district judge having no prior connection with this case. From such hearing the entire background of this matter can be ascertained in order to determine if petitioners were convicted on evidence obtained, and by the use of practices and conduct of the government, in violation of their constitutional rights and in express violation of the Fourth and Fifth Amendments to the Constitution. Simultaneously, the relief requested in the petition pending before this Court, for a

hearing as to the factual circumstances of the *in camera* hearing held before the trial judge, should also be ordered. Such hearing will disclose for the first time in realistic fashion the full nature and extent of the unfairness of the procedures employed in this case and the deprivation of petitioners' constitutional rights in the district court below.

10. Annexed hereto as exhibits, are copies of the search warrants, the affidavits upon which the warrants were based, and returns thereon, all referred to in this affidavit. These warrants are dated respectively August 22, 1959 and August 24, 1959. There is also enclosed as an exhibit the Kalaidjian letter to Referee Loewenthal, referred to hereinabove.

WHEREFORE, it is respectfully prayed that this motion be granted in all respects, and that this proceeding be remanded to the United States District Court for the Southern District of New York, for the purpose of holding and conducting a plenary hearing on the allegations set forth herein, and granting unto petitioners such other and further relief as to the Court may seem just and proper.

DANIEL H. GREENBERG

Sworn to before me this
23rd day of May, 1967.

GAIL ORRICK,
Notary Public,
State of New York.
Qualified in Bronx County.
No. 03-8233713.
Commission Expires March 30, 1968.

Search Warrant.

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF PENNSYLVANIA

Commissioner's Docket No. 2

Case No. 142

UNITED STATES OF AMERICA

v.

JONATHAN DUNN
Sugar Bottom Road
Furlong, Pa.

To William A. O'Brien, United States Marshal, and H. Lawrence Clark, Deputy United States Marshal.

Affidavit having been made before me by Edward C. Kalaidjian that he (has reason to believe) that (on the premises known as) the dwelling, barn and garage of Jonathan Dunn, located on Sugar Bottom Road, Furlong, Pa. in the Eastern District of Pennsylvania there is now being concealed certain property, namely correspondence, memoranda, Minute Books, Journals, Cash Books, Cancelled checks, Books of Original Entry and other records contained in approximately twenty-four (24) filing cabinets, concerning companies, corporations, businesses, firms and individuals set forth on the attached list made a part of this Search Warrant and Affidavit, for the period from January 1, 1953, to the present date, which have been used in committing a violation of Title 18, United States

Code, Section 1341, by the use of the mails by one Lowell M. Birrell in a scheme to defraud Certificate Holders and other creditors of Equitable Plan Company, 6225 South Vermont Avenue, Los Angeles, California and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the (premises) above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the (place) named for the property specified, serving this warrant and making the search (in the daytime) and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 22nd day of August, 1959.

EDWARD W. FURIA,
U. S. Commissioner.

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[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

Affidavit for Search Warrant.

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF PENNSYLVANIA

Commissioner's Docket No. 2

Case No. 142

UNITED STATES OF AMERICA

v.

JONATHAN DUNN
Sugar Bottom Road
Furlong, Pa.

Before Edward W. Furia, Philadelphia, Pennsylvania.

The undersigned being duly sworn deposes and says:

That he (has reason to believe) that (on the premises known as) the dwelling barn and garage of Jonathan Dunn, located on Sugar Bottom Road, Furlong, Pa., in the Eastern District of Pennsylvania, there is now being concealed certain property, namely correspondence, memoranda, Minute Books, Journals, Cash Books, Cancelled checks, Books of Original Entry and other records contained in approximately twenty-four (24) filing cabinets, concerning companies, corporations, businesses, firms and individuals set forth on the attached list made a part of this Affidavit and the Search Warrant, for the period from January 1, 1953, to the present date, which have been used in committing a violation of Title 18, United States Code, Section 1341, by the use of the mails in a scheme to defraud Certificate Holders and other creditors of Equitable Plan Company, 6226 South Vermont Avenue, Los Angeles, California.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

Affidavit for Search Warrant.

At an examination of Mr. Joseph A. DeRisi, who said he was Lowell M. Birrell's personal accountant and an officer of some of the corporations on the attached list, on Thursday, August 20, 1959, Mr. DeRisi stated under oath that the records of Lowell M. Birrell and of companies which he dominated or with which he was associated were in storage at the garage and barn on the premises of Jonathan Dunn, Suger Bottom Road, Furlong, Pa., and that Jonathan Dunn also has an office in his dwelling at the said address where deponent believes additional records may be located, and deponent believes that said records should pertain to all or some of the persons, firms and corporations identified in the attached list, and that said records should contain material evidence with respect to the looting of Equitable Plan Company during the period commencing in October, 1953, when that company came under the domination of Birrell and the persons and firms associated with him. Mr. DeRisi also stated that Jonathan Dunn has been an attorney for Lowell M. Birrell. Deponent's examination of Mr. DeRisi, upon which the foregoing affidavit is based, was conducted in an Ancillary Proceeding in the United States District Court for the Southern District of New York in connection with a proceeding for the reorganization of Equitable Plan Company pending in the United States District Court for the Southern District of California, Central Division.

E. C. KALAIDJIAN,
Signature of Affiant.

Sworn to before me, and subscribed in my presence, Aug. 22, 1957.

EDWARD W. FURIA,
United States Commissioner.

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[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

AMERICAN LEDUC PETROLEUMS, INC.
ANTILLIAN INVESTMENTS, INC.
ATLANTIC BROKERAGE AGENCY, INC.
AMERICAN DYEWOOD COMPANY
AMERICAN DRUGGISTS SYNDICATE, INC.
ADSYN, INC.
JOSEPH D. BLAU
SEYMOUR BERDON
MATTHEW BERDON
LOWELL M. BIRRELL
ELIOT BERKWIT
ALEXANDER BLUMENTHAL
LUIS J. BOTIFOLL
NAHUM BIRNBAUM
BIRNBAUM & COMPANY
BIRRELL & LARSON
BARTELS BREWING COMPANY OF DELAWARE
BARTELS, INC.
BARTELS BREWING COMPANY OF PENNSYLVANIA
NELIK A. BOLOWICZ
BENJO COMPANY
BLAIR HOLDINGS CORP.
BANCO DEFINANCIERO
BLAIR, ROLLINS & COMPANY
HUGH BEGLEY
SIDNEY BROWN
SOYNA BROWN
B. & B. REALTY CO.
BENJAMIN COHEN
JOSEPH W. CROSBY
ROY H. CALLAHAN
COUNTY EQUITIES, INC.
CAMDEN FORGE COMPANY
CUBONDA PETROLEUM, INC.
ORLANDO CASTILLO
CUBAN CANADIAN OIL COMPANY
CALIFORNIA INVESTMENT CORP.
ROY CHAPIN

MONROE CHAPIN
DENNIS CHAVEZ, JR.
CHEMOIL INDUSTRIES, INC.
THOMAS R. CAIRNS
CONTINENTAL INDUSTRIES, INC.
CONTINENTAL CAR-NA-VAR CORP.
CHARLES HOLDINGS, INC.
C. J. SIMPSON GRAIN COMPANY
C. J. SIMPSON GRILLING CORP.
JOSE CAPMANY
JOSEPH DeRISI
DOMESTIC & OVERSEAS CORP.
DOESKIN PRODUCTS, INC.
VIRGIL D. DARDI
LEON DREZNER
D. & D. DRILLING CORPORATION
RAUL deJUAN
PATRICK F. DAWSON
DRUG PRODUCTS, INC.
EKCO CORPORATION
ECHO FALLS OIL COMPANY
ECHO FALLS FARMS CO.
BUCKS COUNTY FARMS COMPANY
BURMONT CORPORATION
EQUITABLE REALTY CO.
EQUITABLE PLAN CO.
ERNEST ESPINOSA
J. W. EHRLICH
JOHN FOX
JAY FISHER
MATTHEW FOX
FERRO BERDON & CO.
FISCAL BUREAU, INC.
HENRY FLATTAU
EDWARD G. FRAWLEY
GREATER NEW YORK INDUSTRIES, INC.
GREATER NEW YORK LABORATORIES, INC.
GREATER NEW YORK AGENCIES, INC.

ALEXANDER L. GUTERMA
GUARANTEE FIRE & MARINE INSURANCE CO.
GUARDIAN INSURANCE COMPANY
GUARDIAN CORPORATION
CHARLES GEISENHEIMER
CLAIRE GOODWIN
JOSEPH D. GARIBALDI
J. P. GATEHOUSE
OSCAR GANS
CHARLES GRANDE
HARMAN TRADING CO.
LEON HENDERSON
HARRY HANDS
STEWART B. HOPPS
ROBERT HOPPS
HUGH BEGLEY & COMPANY
INLAND EMPIRE INSURANCE COMPANY
CENTRAL STANDARD INSURANCE COMPANY
JACQUIN, STANLEY & CO.
J. & J. MANAGEMENT CORPORATION
JOSEPH KUTNER
EMANUEL KATZ
ALBERT KURTIN
KETA GAS & OIL COMPANY
KETA GAS & OIL CORPORATION
RUSSELL KNABB
LEADENHALL CORPORATION
HYMAN LEHRICH
NAT LUKOW
GEORGE LEVINE
L. L. CONSTANTIN & CO.
L. C. LINDHAUER
LATIN AMERICAN CONSOLIDATED INVESTMENTS, INC.
LOWELL M. BIRRELL & COMPANY, LIMITED
RALPH LOSSO
LIMESTREET CORPORATION
MORRIS LUTTERMAN
WILLIAM D. LILLIE

LEO O. L'ESPERANCE
ROSEMARY MADDEN
SIDNEY G. MADENBURG
WILLIAM MEARS
HENRY A. McCARTHY
SUSAN R. MILLER
ALFRED MARKS
JOHN W. MEYER
NORTHWEST UNDERWRITERS, INC.
NORRIS ADAMS, LTD.
JACQUES M. O'ROURKE
OLEAN INDUSTRIES, INC.
OIL DEVELOPMENT & MANAGEMENT CO.
MARY B. PRIOR
PENN CANADIAN OIL COMPANY
PACHECO OIL & MINING COMPANY
PURYS, INC.
FRANK PRATHER
WALTER RIKER
PAUL M. ROCA
JERRY A. RE
GIRARD F. RE
RE & RE
ROYAL AMERICAN INSURANCE COMPANY
HECTOR RIVERO
ROCKTON DRILLING COMPANY
RELDAN TRADING CORPORATION
LOUIS RIVAS-VASQUEZ
RUBY SCHINASI
SAFEWAY & COMPANY, INC,
SAFEWAY FACTORS, INC.
S & C TRADING CO., INC.
1790 CORPORATION
THE CHASE MANHATTAN BANK and any of its officers or employees
MANUFACTURERS TRUST COMPANY and any of its officers or employees
BANK OF AMERICA and any of its officers or employees

JOSEPH L. SELTZER
WALTER P. SMITH
VERNA SKOGLUND
HARRY T. SLAVIN
SAVARD & HART
SEYMAT ASSOCIATES
PAUL SARNOFF
GEORGE STEWART
ROBERT F. SIX
S. J. SMILEY
STATE INVESTMENT CORPORATION
STATE INVESTMENT COMPANY
WILLIAM SAXE
SWAN-FINCH OIL CORPORATION
SWAN-FINCH GAS & DEVELOPMENT CORPORATION
HENRY TROLIN
THE VERMONT COMPANY
TOUCHE NIVEN, BAILEY & SMART
U. S. & FOREIGN UNDERWRITERS S.A.
U. S. MARINE & FOREIGN SECURITIES LTD. (DELAWARE)
U. S. MARINE & FOREIGN SECURITIES LTD. (NEW YORK)
U. S. MARINE & FOREIGN SECURITIES CORP.
UNITED DYE & CHEMICAL CORPORATION
CURTIS C. WHITNEY
PATRICK WOISTED
WILLIAM PENN FIRE INSURANCE COMPANY
HARRY WORKMAN
LUBIT, SINGERMAN & CAPUSTIN

and any other company, corporation, business, firm or individual with whom Lowell M. Birrell has been associated.

Return.

I received the attached search warrant August 22, 1959, and have executed it as follows:

On August 22, 1959, at 1:00 o'clock P.M. I searched (the person) (the preimses) described in the warrant and

I left a copy of the warrant with Jonathon Dunn together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

> Known as Lot #1. Consisting of twenty-one (21) metal and/or wooden file cabinets containing four (4) Drawers. Each drawer containing files, records, information relevant to appended sheet on search warrant and numbered consecutively, from one (1) to eighty-four (84), and thirteen independent cabinets containing files, records and information relevant to appended sheet of search warrant and numbered consecutively from eighty-five (85) to ninety-seven (97) inclusive. Also six (6) cardboard cartons containing files, records and information relative to appended sheet of search warrant and numbered consecutively carton number one (1) to carton number six (6) enclusive. Also One (1) strongbox locked.

This inventory was made in the presence of Edward Kalajjian the Affidavit on the Search Warrant and Jonathon Dunn, the Lessor of the premises searched.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

H. Lawrence Clark.

Subscribed and sworn to and returned before me this 25 day of August, 1959.

Edward W. Furia,
United States Commissioner.

Return.

Furlong
Bucks Co., Pa.
Aug. 22, 1959

Seized of Jonathan D. Dunn the following:

1—Lomega Exploration Ltd. License to do business
1—Photograph Album
21—Cabinets
11—Drawers
2—Cabinet Drawers
1—Cardboard Box
2—Cartons
3—Packages

42—Items and Contents Thereof

H. LAWRENCE CLARK
Deputy U. S. Marshal
E. D. of Pa.

Search Warrant.

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF PENNSYLVANIA

Commissioner's Docket No. 2

Case No. 144

UNITED STATES OF AMERICA

v.

LOWELL M. BIRRELL
Schulberg Farms
Old York Road near Ingham
Spring Road, New Hope, Pa.

To WILLIAM A. O'BRIEN, United States Marshal and H. LAWRENCE CLARK, Deputy United States Marshal.

Affidavit having been made before me by THOMAS J. HILLEGASS, Postal Inspector that he (has reason to believe) that (on the premises known as) Schulberg Farms, Old York Road near Ingham Spring Road, New Hope, Pa., in a two-story white frame barn, a part of which has been converted into living quarters, in the Eastern District of Pennsylvania there is now being concealed certain property, namely correspondence, memoranda, Minute Books, Journals, Cash Books, Cancelled checks, Books of Original Entry and other records contained in approximately twenty (20) filing cabinets, concerning companies, corporations,

businesses, firms and individuals set forth on the attached list made a part of this Search Warrant and Affidavit, for the period from January 1, 1953, to the present date, which have been used in committing a violation of Title 18, United States Code, Section 1341, by the use of the mails in a scheme to defraud Certificate Holders and other creditors of Equitable Plan Company, 6226 South Vermont Avenue, Los Angeles, California, and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the (premises) above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the (place) named for the property specified, serving the warrant and making the search (in the daytime) and if the property be found there to take it,[1] leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 24th day of August, 1959.

EDWARD W. FURIA,
U. S. Commissioner.

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[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits be searched, the warrant may direct that it be served at any time." (Rule 41C)

Affidavit for Search Warrant.

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF PENNSYLVANIA

Commissioner's Docket No. 2

Case No. 144

UNITED STATES OF AMERICA

v.

LOWELL M. BIRRELL
Schulberg Farms
Old York Road near Ingham
Spring Road, New Hope, Pa.

Before EDWARD W. FURIA, Philadelphia, Pa.

The undersigned being duly sworn deposes and says:

That he (has reason to believe) that (on the premises known as) Schulberg Farms, Old York Road near Ingham Spring Road, New Hope, Pa., in a two-story white frame barn, a part of which has been converted into living quarters in the Eastern District of Pennsylvania, there is now being concealed certain property, namely correspondence, memoranda, Minute Books, Journals, Cash Books, Cancelled checks, Book of Original Entry and other records contained in approximately twenty (20) filing cabinets, concerning companies, corporations, businesses, firms and individuals set forth on the attached list made a part of this Affidavit and the Search Warrants, for the period from January 1, 1953, to the present date, which have

been used in committing a violation of Title 28, United States Code, Section 1341, by the use of the mails in a scheme to defraud Certificate Holders and other creditors of Equitable Plan Company, 6226 South Vermont Avenue, Los Angeles, California.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows: On Saturday, August 22, 1959, Mr. Jonathan Dunn, an attorney for Lowell M. Birrell, who resides on Sugar Bottom Road, Furlong, Pa., stated to the deponent that records of Lowell M. Birrell and of companies which he dominated or with which he was associated, were in storage in a two-story white frame barn on the Schulberg Farms, and deponent believes that said records should pertain to all or some of the persons, firms and corporation identified in the attached list, and that said records should contain material evidence with respect to the looting of Equitable Plan Company during the period commencing in October, 1953, when that company came under the domination of Birrell and the persons and firms associated with him.

THOMAS J. HILLEGASS,
Postal Inspector.

Sworn to before me, and subscribed in my presence, August 24, 1959.

EDWARD W. FURIA,
United States Commissioner.

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[1] The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

AMERICAN LEDUC PETROLEUMS, INC.
ANTILLIAN INVESTMENTS, INC.
ATLANTIC BROKERAGE AGENCY, INC.
AMERICAN DYEWOOD COMPANY
AMERICAN DRUGGISTS SYNDICATE, INC.
ADSYN, INC.
JOSEPH D. BLAU
SEYMOUR BERDON
MATTHEW BERDON
LOWELL M. BIRRELL
ELIOT BERKWIT
ALEXANDER BLUMENTHAL
LUIS J. BOTIFOLL
NAHUM BIRNBAUM
BIRNBAUM & COMPANY
BIRRELL & LARSON
BARTELS BREWING COMPANY OF DELAWARE
BARTELS, INC.
BARTELS BREWING COMPANY OF PENNSYLVANIA
NELIK A. BOLOWICZ
BENJO COMPANY
BLAIR HOLDINGS CORP.
BANCO DEFINANCIERO
BLAIR, ROLLINS & COMPANY
HUGH BEGLEY
SIDNEY BROWN
SOYNA BROWN
B. & B. REALTY CO.
BENJAMIN COHEN
JOSEPH W. CROSBY
ROY H. CALLAHAN
COUNTY EQUITIES, INC.
CAMDEN FORGE COMPANY
CUBONDA PETROLEUM, INC.
ORLANDO CASTILLO
CUBAN CANADIAN OIL COMPANY
CALIFORNIA INVESTMENT CORP.
ROY CHAPIN

MONROE CHAPIN
DENNIS CHAVEZ, JR.
CHEMOIL INDUSTRIES, INC.
THOMAS R. CAIRNS
CONTINENTAL INDUSTRIES, INC.
CONTINENTAL CAR-NA-VAR CORP.
CHARLES HOLDINGS, INC.
C. J. SIMPSON GRAIN COMPANY
C. J. SIMPSON GRILLING CORP.
JOSE CAPMANY
JOSEPH DERISI
DOMESTIC & OVERSEAS CORP.
DOESKIN PRODUCTS, INC.
VIRGIL D. DARDI
LEON DREZNER
D. & D. DRILLING CORPORATION
RAUL deJUAN
PATRICK F. DAWSON
DRUG PRODUCTS, INC.
EKCO CORPORATION
ECHO FALLS OIL COMPANY
ECHO FALLS FARMS CO.
BUCKS COUNTY FARMS COMPANY
BURMONT CORPORATION
EQUITABLE REALTY CO.
EQUITABLE PLAN CO.
ERNEST ESPINOSA
J. W. EHRLICH
JOHN FOX
JAY FISHER
MATTHEW FOX
FERRO BERDON & CO.
FISCAL BUREAU, INC.
HENRY FLATTAU
EDWARD G. FRAWLEY
GREATER NEW YORK INDUSTRIES, INC.
GREATER NEW YORK LABORATORIES, INC.
GREATER NEW YORK AGENCIES, INC.

ALEXANDER L. GUTERMA
GUARANTEE FIRE & MARINE INSURANCE CO.
GUARDIAN INSURANCE COMPANY
GUARDIAN CORPORATION
CHARLES GEISENHEIMER
CLAIRE GOODWIN
JOSEPH D. GARIBALDI
J. P. GATEHOUSE
OSCAR GANS
CHARLES GRANDE
HARMAN TRADING CO.
LEON HENDERSON
HARRY HANDS
STEWART B. HOPPS
ROBERT HOPPS
HUGH BEGLEY & COMPANY
INLAND EMPIRE INSURANCE COMPANY
CENTRAL STANDARD INSURANCE COMPANY
JACQUIN, STANLEY & CO.
J. & J. MANAGEMENT CORPORATION
JOSEPH KUTNER
EMANUEL KATZ
ALBERT KURTIN
KETA GAS & OIL COMPANY
KETA GAS & OIL CORPORATION
RUSSELL KNABB
LEADENHALL CORPORATION
HYMAN LEHRICH
NAT LUKOW
GEORGE LEVINE
L. L. CONSTANTIN & CO.
L. C. LINDHAUER
LATIN AMERICAN CONSOLIDATED INVESTMENTS, INC.
LOWELL M. BIRRELL & COMPANY, LIMITED
RALPH LOSSO
LIMESTREET CORPORATION
MORRIS LUTTERMAN
WILLIAM D. LILLIE

LEO O. L'ESPERANCE
ROSEMARY MADDEN
SIDNEY G. MADENBURG
WILLIAM MEARS
HENRY A. McCARTHY
SUSAN R. MILLER
ALFRED MARKS
JOHN W. MEYER
NORTHWEST UNDERWRITERS, INC.
NORRIS ADAMS, LTD.
JACQUES M. O'ROURKE
OLEAN INDUSTRIES, INC.
OIL DEVELOPMENT & MANAGEMENT CO.
MARY B. PRIOR
PENN CANADIAN OIL COMPANY
PACHECO OIL & MINING COMPANY
PURYS, INC.
FRANK PRATHER
WALTER RIKER
PAUL M. ROCA
JERRY A. RE
GIRARD F. RE
RE & RE
ROYAL AMERICAN INSURANCE COMPANY
HECTOR RIVERO
ROCKTON DRILLING COMPANY
RELDAN TRADING CORPORATION
LOUIS RIVAS-VASQUEZ
RUBY SCHINASI
SAFEWAY & COMPANY, INC.
SAFEWAY FACTORS, INC.
S & C TRADING CO., INC.
1790 CORPORATION
THE CHASE MANHATTAN BANK and any of its officers or employees
MANUFACTURERS TRUST COMPANY and any of its officers or employees
BANK OF AMERICA and any of its officers or employees

Affidavit of Search Warrant.

JOSEPH L. SELTZER
WALTER P. SMITH
VERNA SKOGLUND
HARRY T. SLAVIN
SAVARD & HART
SEYMAT ASSOCIATES
PAUL SARNOFF
GEORGE STEWART
ROBERT F. SIX
S. J. SMILEY
STATE INVESTMENT CORPORATION
STATE INVESTMENT COMPANY
WILLIAM SAXE
SWAN-FINCH OIL CORPORATION
SWAN-FINCH GAS & DEVELOPMENT CORPORATION
HENRY TROLIN
THE VERMONT COMPANY
TOUCHE NIVEN, BAILEY & SMART
U. S. & FOREIGN UNDERWRITERS S.A.
U. S. MARINE & FOREIGN SECURITIES LTD. (DELAWARE)
U. S. MARINE & FOREIGN SECURITIES LTD. (NEW YORK)
U. S. MARINE & FOREIGN SECURITIES CORP.
UNITED DYE & CHEMICAL CORPORATION
CURTIS C. WHITNEY
PATRICK WOISTED
WILLIAM PENN FIRE INSURANCE COMPANY
HARRY WORKMAN
LUBIT, SINGERMAN & CAPUSTIN

and any other company, corporation, business, firm or individual with whom Lowell M. Birrell has been associated.

Return.

I received the attached search warrant August 24, 1959 and have executed it as follows:

On August 24, 1959 at 1:30 o'clock P. M., I searched (the premises) described in the warrant and

I left a copy of the warrant with at the place of search. together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

> Known as Lot #2. Consisting of 21 metal and/or wooden file cabinets, containing four drawers each, one (1) metal file cabinet containing five (5) drawers, one (1) wooden bureau continuing four (4) drawers, each drawer containing files, records and information relevant to the appended sheets attached to this search warrant and numbered consecutively from one (1) to ninety-three (93) incl.

This inventory was made in the presence of James Phelan, Assistant U. S. Attorney and Thomas Hillegass, Postal Inspector

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

H. Lawrence Clark.

Subscribed and sworn to and returned before me this 25 day of August, 1959.

Edward W. Furia,
United States Commissioner.

Letter, dated May 22, 1961.

THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD
(Barry, Wainwright, Thacher & Symmers)
40 Wall Street
New York 5, N. Y.

May 22, 1961

Honorable Herbert Loewenthal
Referee in Bankruptcy
United States Court House
Foley Square
New York, New York

Re: In the Matter of the Ancillary
Proceeding of Equitable Plan, Debtor
No. 93698
Our File No. 12,515

Dear Sir:

As attorneys for the debtor herein, we are submitting a brief summary concerning the conduct of the abovementioned ancillary proceeding which has been pending since December, 1958.

Equitable Plan Company, an industrial loan company at Los Angeles, California, is a debtor in a Chapter X reorganization proceeding pending in the United States District Court for the Southern District of California, Central Division. Its business, properly, was to accept the deposits from the general public and to invest the funds obtained in consumer finance paper, personal loans and choses in action. Commencing in October, 1953, the company was required by a corporate nominee of Lowell M. Birrell and a group of associates, and during the ensuing several years they proceeded to appropriate unlawfully from Equitable Plan Company funds of its depositors amounting to more than $8,000,000. The focal point of the conspiracy

appeared to be located in New York City and we were retained by the Trustee to commence an investigation and to institute various legal proceedings in behalf of the estate.

Our investigation has been conducted through the ancillary proceeding pursuant to § 167 of the Bankruptcy Act during the past two years. We have interrogated more than 40 witnesses at approximately 115 hearings and more than 10,000 pages of testimony have been taken. In addition, scores of business firms and individuals have produced thousands of documents and business records pursuant to subpoenas issued in that proceeding. The information and evidence thus obtained has been used in many legal proceedings:

1. A grand jury for Los Angeles County has handed up an indictment of Lowell Birrell and several former officers and directors of Equitable Plan Company based upon their looting of the company.

2. A federal grand jury in the Southern District of New York has handed up an indictment of several former officers and directors of Doeskin Products, Inc., based upon their participation in the theft of 1,070,000 of the corporation's common shares and their looting of that corporation (*United States of America* v. *Lowell M. Birrell,* et al. 60 Criminal 200). A number of the indicted defendants have already pleaded guilty to certain of the counts in the indictment.

3. Upon the application of the trustee of Equitable Plan Company, receiverships have been granted for Bucks County Farms, Inc., owner of approximately 800 acres of valuable real estate in Bucks County, Pa. (3 Cir., 280 F. 2d 739), Doeskin Products, Inc. (*Ferguson* v. *Tabah,* 2 Cir.,

F. 2d , decided April 13, 1961, affirming *Ferguson* v. *Birrell*, 190 F. Supp. 506) and The Bartels Brewing Company (Pa.)

4. An action has been brought against W. Lodi B. Realty Co. Inc. in the New Jersey State Court wherein the trustee has obtained an attachment of valuable industrial real estate through the exposure of Birrell's concealed beneficial interest therein.

5. In behalf of the trustee, we located and seized approximately 45 file cabinets at Bucks County, Pennsylvania, in August, 1959, containing records pertinent to the larcenies and manipulations of Lowell M. Birrell and the corporations which he dominated. Among the files seized were records pertinent to the activities of the brokerage firm of Re, Re and Sagarese. Copies of these records have been furnished to the Securities and Exchange Commission which recently announced its decision to conduct an investigation of the American Stock Exchange. The ancillary proceeding is still being vigorously prosecuted in a number of areas which have not yet been investigated and we cannot anticipate at this time when the proceeding will be concluded.

Respectfully,

THATCHER, PROFFITT, PRIZER, CRAWLEY & WOOD